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Supreme Court of the United States

OCTOBER TERM, 1963.

No. 452

ALLIED VAN LINES, a corporation,
Petitioner,

vs.

CARL G. ZIMMERMAN,
Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CHAMPLIN RIBBLY COMPANY CHICAGO

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INTRODUCTION

Petitioner feels compelled to file this Reply to Respondent's Brief in Opposition because of the savagery of Respondent's attack upon Petitioner's concept of the *real* meaning and impact of the decision of the Court of Appeals upon it as a regulated motor common carrier of used household goods for hire, upon its Bill of Lading in its entirety, upon the Contract Terms and Conditions of its Bill of Lading, and upon the Released Rates Order issued to it by the Interstate Commerce Commission pursuant to the authority granted the Commission by Sections 20(11) and 319 of 49 U. S. C. Moreover, Petitioner sincerely believes

that, viewing its Bill of Lading as a contract of carriage having any existence or validity separate and apart from the provisions of Released Rates Order No. MC-309, the Court of Appeals erred in applying only Section 1(b) of Petitioner's Bill of Lading in this case, and that this aspect of the matter is of such importance to the body of law dignified by the term Transportation Law that this Court can and should grant *Certiorari* in order to interpret and apply the loss and damage provisions of Petitioner's Bill of Lading governing cargo loss and damage claims which present the element of a substantial underdeclaration of value by a shipper

ARGUMENT

I

It Is Both Necessary and Appropriate for the Court to Grant Certiorari in This Case for the Purpose of Construing Petitioner's Bill of Lading in the Light of 49 U S C No. 20(11).

Petitioner is not asking this Court to construe Section 20(11) of the Interstate Commerce Act generally or as an academic problem, but rather to construe Petitioner's Bill of Lading in the light of Section 20(11). Petitioner wishes to point out that the language employed by it in the Contract Terms and Conditions of its Bill of Lading pertaining to cargo loss and damage very slavishly follows the language contained in Released Rates Order No. MC-309 of the Interstate Commerce Commission, which Released Rates Order is necessarily based upon the Commission's interpretation of Section 20(11) in its entirety, and contends that the Court of Appeals unwittingly construed Released Rates Order No. MC-309, adversely to the Commission's understanding of it, and contrary to this Petitioner's understanding of it as exemplified in its Bill of Lading and applied by it in literally hundreds of thousands of cargo loss and damage claims during the 13 years in which Released Rates Order No. MC-309 has been in force and effect.

Moreover, the decision of the Court of Appeals violates that portion of Section 20(11) which provides that "any common carrier . . . shall be liable . . . *for the full actual loss, damage or injury to such property* caused by it . . ." (Emphasis supplied). This is clearly apparent from the language used by the Court below that "The section (Section

1(b) of Petitioner's Bill of Lading) does not state that an alternative method may also be used, i.e., *actual loss or damage to an article*, when such loss or damage is less than the amount produced by the application of the percentage derived from the formula" (Emphasis supplied). By allowing Respondent to recover the full value, however computed, of certain articles in his shipment which were not destroyed nor totally damaged, the Court below conferred a benefit on this shipper prohibited by Section 20(11),—a benefit which Petitioner is expressly forbidden to confer upon a shipper, one which Petitioner and the Commission most assuredly did not intend to confer upon the shipping public, and one not justified by any known principle of transportation law or the law of compensatory damages. The award of *de facto* punitive damages should be grounded upon something far stronger than a misconstruction of a regulated carrier's Bill of Lading based upon a Released Rates Order promulgated by the Interstate Commerce Commission pursuant to the power granted it by the Second Cummins Amendment to Section 20(11) of the Interstate Commerce Act.

Petitioner feels so strongly about this grievous error committed by the Court below that Petitioner's attorney of record in this Honorable Court took the liberty of filing with the Clerk of this Court as a Supplemental Record a Certified Copy of the Petition for Rehearing filed in the Court of Appeals by Petitioner's former attorneys of record, in which counsel attempted to point out the patent absurdity of applying only Section 1(b) of Petitioner's Bill of Lading when Section 1 of Petitioner's Bill of Lading very plainly states that "The carrier shall be liable for the *actual loss or damage* of or to any article". (Emphasis supplied.)

With respect to Respondent's mild objection that Released Rates Order No. MC-309 is *not* a part of the record in this

case (footnote to page 5 of Respondent's Brief in Opposition). Petitioner respectfully urges this Court to consider it as part of the record available to it for the reasons assigned in Footnote 2, pp. 6, 7, of its Petition for Writ of Certiorari, and for the further reasons that this Court may take judicial notice of Orders issued by the Interstate Commerce Commission pursuant to specific grants of authority by the legislative branch of the federal government, and that, although this case is an adversary proceeding in every sense of the term, pure questions of law are presented which can be decided upon the record available to this Court.

II

The Court Should, in All Events, Grant Certiorari to Consider the Proper Interpretation of Allied Van Lines' Bill of Lading.

The principal evil of the decision of the Court below is that it applied Section 1(b) exclusively of Petitioner's Bill of Lading Contract Terms and Conditions to the factual situation in the case at bar, ignoring the controlling language contained in Section 1 concerning *"actual loss or damage"* applicable to Released Value claims arising under Section 1(a) and Declared Value Claims arising under Section 1(b).

The decision of the Court below cannot be justified on any known principles of transportation law, contract law, or the law of damages, and this Court should grant *certiorari* in order to reverse the decision of the Court of Appeals and expunge this unsupported and unsupportable decision from the books so that Petitioner, widely known as "The World's Largest and Most Trusted Mover", may be enabled to continue to adjust cargo loss and damage claims in the future

as uniformly, equitably and lawfully as it has done so for the ~~past~~ 13 years while operating under Released Rates Order No. MC-309 and the co-ordinate wording of the Contract Terms and Conditions of its Bill of Lading.

Although this is not a so-called "class action", Petitioner would be remiss if it did not call it to the attention of this Honorable Court that the decision of the Court below, if allowed to stand, will adversely affect the handling and payment of claims by other household goods carriers of stature in the industry who are operating under Released Rates Orders of the Interstate Commerce Commission identical in history, wording and philosophy to Released Rates Order No. MC-309.

Petitioner would also consider itself remiss if it did not point out to the Court that a very high percentage of interstate movements are into the Western States comprising the bulk of the Ninth Circuit,—as witness the phenomenal population growth of Arizona and California, especially—and that the decision by the Court of Appeals for the Ninth Circuit in the case at bar, if allowed to stand, will have a very grave special impact as well as a very serious general impact on the computation and adjustment of cargo loss and damage claims, not only in Declared Value claims but also in Released Value claims because of the scope of the language employed by the Court below in its opinion. The "small fire in Cochise County, Arizona", so lightly referred to by Respondent (page 7 of his Brief in Opposition) although it caused *him* to seek alleged damages of $26,271.11, is in fact a burgeoning conflagration.

CONCLUSION.

For the foregoing reasons, Petitioner reiterates that its petition for a writ of certiorari should be granted.

Respectfully submitted,

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